

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

IN RE: . Case No. 08-35653(KRH)
. .
. .
CIRCUIT CITY STORES, .
INC., et al., . 701 East Broad Street
. Richmond, VA 23219
. .
Debtors. .
. .
. March 18, 2010
. . 10:05 a.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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I N D E X

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EXHIBITS

ID.

Debtors' Exhibit A Auction transcript

18

1 COURT CLERK: All rise. The United States Bankruptcy
2 Court for the Eastern District of Virginia is now in session,
3 the Honorable Kevin R. Huennekens presiding. Please be seated
4 and come to order.

5 In the matter of Circuit City Stores, Incorporated,
6 hearing on Items 1 through 40 as set out on the debtors'
7 agenda.

8 MR. FOLEY: Good morning, Your Honor. Doug Foley of
9 McGuireWoods on behalf of the debtors. With me at counsel
10 table is Gregg Galardi and Ian Fredericks from Skadden Arps, as
11 well as Dan Blanks from my firm. Here in court today from the
12 company, Your Honor, is Katie Bradshaw, who's the vice
13 president controller, and Debra Miller, who's the acting
14 general counsel.

15 Your Honor, the agenda today, we have several
16 matters, most of which are claims matters on for status. The
17 first item on the agenda which is the OmniMount matter, we're
18 pleased to report to the Court, Mr. Gray is here, that we have
19 completely resolved this matter and will be submitting a
20 stipulation today that will remove it from the docket.

21 MR. GRAY: Good morning, Your Honor. William Gray
22 from OmniMount. That's correct. We have this resolved and
23 hope to have an order entered shortly.

24 THE COURT: All right. Thank you.

25 MR. GRAY: Thank you.

1 MR. FOLEY: Your Honor, Items Number 2 and 3, these
2 are the Madcow motions that we've been carrying forward. We're
3 trying to get contact information for a business person from
4 Madcow in order to reconcile the amounts of their claims. We
5 think we're -- once we get that communication hooked up that
6 we'll be able to resolve these completely. But, for now, Your
7 Honor, we're asking that they be adjourned to the April 6 date
8 at ten.

9 THE COURT: All right. They'll be adjourned.

10 MR. FOLEY: Your Honor, if we could skip just
11 short -- briefly, Items 4 and 5, these are real estate property
12 sale motions that Mr. Fredericks will address the Court on, as
13 well as Numbers 6 and 7 which is the 401K motion and the
14 Berkadia motion which Mr. Galardi will address the Court on.

15 THE COURT: All right.

16 MR. FOLEY: Items Number 8 through 36, Your Honor,
17 are our -- are on for status hearing. These are our omnibus
18 claim objections and we also have the same form of chart that
19 we have handed up to the Court before with respect to the
20 overall status of the claims. And unfortunately, you still
21 need a magnifying glass to read this somewhat, but the -- in
22 the aggregate, Your Honor, at the bottom subject to these foot
23 notes because some of the omnibus objections were objections to
24 either reclassify or reduce claims rather than to disallow
25 them, it shows --

1 THE COURT: You've handed up three pages for this.

2 It's --

3 MR. FOLEY: Three copies of the same.

4 THE COURT: -- three copies of the same page.

5 MR. FOLEY: Yes, Your Honor.

6 THE COURT: All right.

7 MR. FOLEY: That the Court has ordered -- entered
8 orders with respect to 7800 -- approximately 7800 claims and
9 there's -- out of ones that we've objected to and haven't
10 withdrawn, there's 301 remaining. And we also have resolved
11 since objecting and since there being a response, 164 claims
12 which is set forth in the final column.

13 Your Honor, except for the ones that I'll mention in
14 a minute, most of these claims that are set forth in agenda
15 Items Number 8 through 36 are being continued for status only
16 until the April 15th date. However, there are several that we
17 have filed specific notices on, so that the parties have notice
18 that we will be going forward on the merits on some of the
19 upcoming dates including next week, March 25th, as well as
20 April 6. So, if I could just go through that on the record,
21 Your Honor.

22 THE COURT: You may.

23 MR. FOLEY: Omnibus Objection Number 5, will be going
24 forward on the merits on April 6 with respect to the Miner
25 Fleet claim, Vector Security, Schimenti Construction and

1 U.S. -- I apologize. Schimenti Construction, U.S. Signs will
2 be on April 29th, not April 6, but Miner Fleet and Vector
3 Security will be on April 6. Eastern Security which is in our
4 Omnibus Objection Number 6 will be on April 6.

5 THE COURT: And how do these relate to the numbers on
6 the -- for instance, where do I find Omni 5 as I started at
7 Number 8 on the agenda?

8 MR. FOLEY: Well, Omni 5, Your Honor, I believe is
9 set forth in Agenda Item Number --

10 UNIDENTIFIED SPEAKER: -- 26.

11 MR. FOLEY: -- 26. Thank you. Twenty-six.

12 THE COURT: All right. I see it. Thank you. All
13 right. And what are we doing with Omni 5?

14 MR. FOLEY: Omni 5, Your Honor, this one includes
15 several claims that are left which are on Exhibit A on Page 1
16 and 2. We're going forward on the merits with respect to the
17 Miner Fleet Management Group claim, the Vector Security claim
18 on April 6 and we've filed specific notices with respect to
19 that for those parties and they're aware of it. Schimenti
20 Construction and U.S. Signs will be on April 29th.

21 THE COURT: All right. Thank you.

22 MR. FOLEY: And Omnibus Objection Number 6 is Eastern
23 Security, Your Honor. This is Agenda Item Number 27.

24 THE COURT: All right.

25 MR. FOLEY: That one will be going forward on April

1 6, as well.

2 THE COURT: All right.

3 MR. FOLEY: Your Honor, there are several individuals
4 listed in the Exhibit A to the agenda, the first one being on
5 Page 5 which is Jack Hernandez which is in Omnibus Objection
6 Number 19. Your Honor is probably aware, there are several
7 purported class representatives on class action litigation
8 claims. We have those set up for summary judgment hearing next
9 week on March 25th.

10 THE COURT: All right.

11 MR. FOLEY: And, so those will be going forward on
12 the 25th. There will be several of those. Item number --
13 Omnibus Objection Number 19, with respect to the Laurel
14 Plumbing claim and the Union Construction Group claim will be
15 going forward on April 6. Omnibus Objection Number 19 which is
16 Robert Gentry which is another purported class representative
17 on a class action litigation, again, March 25th at 2:30.

18 Then we have in our Omnibus Objection Number 27, Your
19 Honor, this is objection to various taxing authorities and
20 county tax claims.

21 THE COURT: All right. And that -- this now is
22 Agenda Item Number 30?

23 MR. FOLEY: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. FOLEY: Harris County taxes, Los Angeles,

1 California, Monterey, California, and San Bernadino, California
2 claims will be going forward on their merits on April 6.

3 THE COURT: All right.

4 MR. FOLEY: Omnibus Objection Number 31, the
5 objection to Jonathan Card, who is, again, a purported class
6 representative in some class action litigation, that one's
7 going forward on March 25th at 2:30. Omnibus Objection Number
8 31, Joseph Scaf, again, he's a purported class representative.
9 This one's going forward next week, March 25th at 2:30.
10 Similarly, Franklin Wilson, which is in Omnibus Objection
11 Number 31 who is also purported class rep will be going forward
12 on March 25th at 2:30.

13 THE COURT: All right.

14 MR. FOLEY: Omnibus Objection Number 57 which is on
15 Page 23 of Exhibit A to the agenda and is Item Number 34 on the
16 agenda, Snell Acoustics, San Disk Corporation, THQ, Inc., Kelly
17 Breitenbecher, James Wimmer and another claim of Snell
18 Acoustics which is in Omnibus Objection 58 are all going
19 forward on the merits on April 6, Your Honor, at ten.

20 THE COURT: Okay.

21 MR. FOLEY: And other than that, Your Honor, the
22 balance of the claims are being continued for status hearing
23 until the April 15th hearing date.

24 Your Honor, Item Number -- Agenda Item Number 40 if
25 we could skip to that, that's our adversary proceeding

1 involving Sharp Electronics. I believe counsel may be on the
2 phone with respect to that matter, but we're prepared for the
3 Court to enter it's standard form scheduling order with respect
4 to that. It's essentially a preference action, as well as
5 claims for a collection of accounts receivable. And, so we
6 would need the Court's calendar to set some trial dates and
7 back up on discovery schedules.

8 THE COURT: All right. Very good. Yes, sir. You
9 wish to be heard on that.

10 UNIDENTIFIED ATTORNEY: Yes, Your Honor.

11 MS. BORGES: This is Wanda Borges, Borges and
12 Associates, LLC. I am counsel for Sharp Electronics, Corp.,
13 and Brian Stark and I have been in at least weekly, several
14 times weekly communication. We're trying to work out various
15 aspects of the case. We were hoping to do so informally as
16 possible before entering into formal discovery, but at Mr.
17 Stark's suggestion, he -- or rather email, he informed me that
18 Your Honor would prefer to have a formal scheduling order in
19 place even if we do continue informal discussion.

20 So, with that understanding that this is Your Honor's
21 direction, we're ready to go ahead with the scheduling order.
22 But, we would request that any trial date for this matter not
23 be set really until early in 2011. There are massive documents
24 on this, both with respect to the accounts receivable portion
25 of their complaint, their claims reconciliation that has been

1 going back and forth and to that, it looks like we're getting
2 close to a number that we might be able to agree on. On the
3 preference side, we had sent to Circuit City our preference
4 analysis about -- I'm going to say about two weeks ago and it
5 is a, again, a massive preference analysis. As of the day
6 before yesterday, Mr. Stark informed me that Circuit City is
7 still working through our preference analysis and numbers.

8 So, I think this is not something that's going to be
9 easy to get down to the bottom of, but will take a lot of time
10 and effort going back and forth with numbers and that's why I
11 would request a lengthy period of time and a date for trial not
12 before the early part of 2011.

13 THE COURT: All right. Ms. Borges, how do I spell
14 your name?

15 MS. BORGES: B-o-r-g-e-s.

16 THE COURT: All right. Thank you. And this is -- I
17 don't know if you're familiar with the Eastern District of
18 Virginia, but it's referred to as the rocket docket in that I
19 can't accommodate your request for setting this out into the
20 early part of next year. I was looking at either a September
21 or October trial date.

22 MS. BORGES: Well, clearly then I would ask the
23 latest date in October.

24 THE COURT: And that would be consistent with how we
25 schedule things in this district.

1 MS. BORGES: Clearly then, Your Honor, I would
2 request the latest possible date in October.

3 MR. FOLEY: We're fine with an October date, Your
4 Honor.

5 THE COURT: All right. And how long is it going to
6 take to try this matter, Mr. Foley?

7 MR. FOLEY: I would think it would be safe to plan
8 for two days, Your Honor.

9 THE COURT: Two days, all right. I can give you the
10 25th and the 26th of October.

11 MR. FOLEY: That's fine, Your Honor.

12 THE COURT: Ms. Borges, is that fine with you?

13 MS. BORGES: I am checking my calendar now, Your
14 Honor. Yes, Your Honor. That is fine.

15 THE COURT: All right. So, the Court has reserved
16 those two days. The Court will enter its standard pretrial
17 order with regard to scheduling of discovery and Rule 26
18 exchange of information and expert witnesses and the like.
19 Counsel may change the times set forth in the order by
20 agreement, but the trial date will not be changed.

21 MR. FOLEY: Thank Your Honor.

22 MS. BORGES: Thank Your Honor.

23 MR. FOLEY: Your Honor, Mr. Blanks and Ian Fredericks
24 will address the status of the matters that we had on going
25 forward on the merits today which are Agenda Items Number 37,

1 38 and 39. And as I mentioned earlier, Mr. Fredericks will
2 address the sale motions under four and five and Mr. Galardi
3 will address the 401K motion and Berkadia motion which is six
4 and seven.

5 THE COURT: All right.

6 MR. BLANKS: Good morning, Your Honor. Dan Blanks on
7 -- with McGuireWoods on behalf of the debtors. To take this
8 slightly out of order as Mr. Foley just mentioned, I'll address
9 the issues with respect to Mitsubishi and with respect to
10 Audiovox which are included in Omnis -- I'm sorry, with respect
11 to the Agenda Items 37 through 39. Mr. Fredericks will address
12 Bethesda Softworks.

13 THE COURT: All right.

14 MR. BLANKS: Your Honor, yesterday we submitted a
15 consensual order resolving all of the procedural issues with
16 respect to Mitsubishi. Mitsubishi has signed off on that
17 procedural order. We continue in discussions with Mitsubishi
18 with respect to the substantive issues and the resolution of
19 their claims, as well as the substantive issues with respect to
20 a possible collection action with respect to accounts
21 receivable and a possible preference action.

22 With respect to Audiovox, this has been up for status
23 before. It's, again, up for status for today. We continue in
24 discussions on the substantive reconciliation and settlement
25 with respect to their claims and possible accounts receivable,

1 as well. And, so we'd ask that both of these matters -- I'm
2 sorry, with respect to Audiovox, we'd request that this matter
3 be adjourned over to April 15th. With Mitsubishi, that
4 resolves all of the issues with their claims at this time,
5 procedural issues. And, so that would not need to be continued
6 because all of the omnibus objections that they had pending
7 have been reconciled including their entirety.

8 THE COURT: All right. Very good. The Court will
9 accommodate that.

10 MR. BLANKS: Your Honor, one point, the received
11 issue with respect to Mitsubishi, they are still included in
12 Omnibus 20. That particular issue is not the procedural issue.
13 That's a substantive issue, so that would also be adjourned
14 over to April 15th.

15 THE COURT: All right. That -- we didn't resolve
16 that at the last hearing?

17 MR. BLANKS: That has not been resolved.

18 THE COURT: All right. Very good. Thank you.

19 MR. FREDERICKS: Just to clarify, Your Honor, I think
20 your question was did you resolve the received issue? Yes.
21 The -- what the parties have been --

22 THE COURT: I hope I had. I just --

23 MR. FREDERICKS: The parties are taking your opinion
24 and then working with Mitsubishi to figure out exactly whether
25 or not the goods that were on dispute on Omni 20 that the

1 debtors alleged were outside of the 20 days, are actually
2 outside of the 20 days given the opinion. So, that's what the
3 parties --

4 THE COURT: Given the factual circumstance.

5 MR. FREDERICKS: Exactly.

6 THE COURT: Got it. Okay. I understand.

7 MR. FREDERICKS: Correct.

8 THE COURT: Thank you.

9 MR. FREDERICKS: You're welcome, Your Honor. For the
10 record, Ian Fredericks of Skadden Arps. With respect to
11 Bethesda Software Products, this is the debtors' fourth omnibus
12 objection. We're very close to a global settlement with
13 Bethesda, but we had advised them that, for purposes of
14 cleaning up the claims register and the omnibus objections,
15 these were simply duplicative claims. We advised them that we
16 would be going forward. They advised us that they didn't have
17 any further objection to having these duplicate claims
18 disallowed.

19 So, while we still working with them on a settlement,
20 we'd request that the Court disallow these duplicative claims.

21 THE COURT: All right. And this is matter Number 4
22 and the agenda?

23 MR. FREDERICKS: It's not -- no, I'm sorry, it's not
24 matter Number 4. It's the fourth omnibus objection. I believe
25 it's matter 37.

1 THE COURT: Thirty-seven, all right. Yes, I see it.
2 All right. So, the duplicate claims will be disallowed.

3 MR. FREDERICKS: Correct, Your Honor. And they would
4 have one surviving claim which we're close to having a global
5 resolution about.

6 THE COURT: All right. All right. Thank you.

7 MR. FREDERICKS: Thank you, Your Honor. Going -- and
8 I apologize for going so out of order for Your Honor today, but
9 with respect to matter Number 4 which is one of the debtors'
10 two sale motions on for today.

11 THE COURT: Right.

12 MR. FREDERICKS: That's the debtors' sale of property
13 located in White Hall, Pennsylvania. In the courtroom today, I
14 have Ms. Katie Bradshaw who's the current VP, vice president
15 and controller of Circuit City. And if it's okay with Your
16 Honor, I'd proffer her testimony concerning the sale?

17 THE COURT: You may.

18 MR. FREDERICKS: If called to testify, Ms. Bradshaw
19 would state that this was a 1.67 acre parcel of land located in
20 White Hall, Pennsylvania. It was primarily a parking lot
21 adjacent to one of Circuit City's stores that was leased. It
22 is, for all intent and purposes, only accessible by way through
23 the main parking lot going in. (Indiscernible) marketed this
24 property since the liquidation was commenced in January and for
25 over a year, there was very little interest in the park -- in

1 the property given its location and accessibility.

2 Ultimately, the debtors received a bid from the
3 landlord of the store that they used to lease, Dow Allentown
4 (phonetic), LLC, and that bid was in the amount of \$60,000.
5 The debtors accepted that as a stalking horse bid and filed a
6 motion to -- filed a motion for approval of that sale subject
7 to higher or better bids.

8 After the motion was filed and before the bid
9 deadline, the debtors received one competing bid. It was from
10 a owner of property adjacent to the parking lot on the other
11 side who submitted a bit for \$65,000 which was the minimum
12 overbid. The debtors determined that this was a qualified bid
13 and conducted an auction. That party's name was H&L Holdings.

14 The debtors are happy to report they had a very
15 competitive auction. There appears to have been some type of a
16 dynamic between these two owners of real property located
17 adjacent to the parking lot. Ultimately, the final price was
18 \$910,000. It was submitted by H&L Holdings. That's some 15
19 times the stalking horse bid. The debtors determined that that
20 was the highest or otherwise best bid at the auction and have
21 accepted it subject to this Court's approval.

22 Ms. Bradshaw would also testify that the -- both
23 parties to the auction -- both of the counter parties who
24 participated in the auction acted in good faith. There was no
25 collusion. She believes there is a sound business

1 justification for the sale of the property as the debtors have
2 no further use for it and that the sale to H&L Holdings at
3 \$910,000 is the highest or otherwise best bid that they
4 received, is in the best interest to the debtors' estates and
5 their creditors. And for Your Honor's reference, I do have a
6 copy of the auction transcript which I would mark as Exhibit A.

7 THE COURT: All right. All right. The transcript
8 will be marked as Debtors' Exhibit A.

9 MR. FREDERICKS: And with that, Your Honor, that
10 would conclude Ms. Bradshaw's proffer.

11 THE COURT: All right. Does any party wish to cross
12 examine the proffered witness, Ms. Bradshaw, with regard to the
13 proffered testimony?

14 (No audible response)

15 THE COURT: All right. The proffer is accepted.

16 MR. FREDERICKS: Thank Your Honor. Based on that,
17 the debtors would request approval of the sale to H&J Holdings
18 for \$910,000 and also request approval of the second highest or
19 otherwise best bid which was 905,000. The bid valued at
20 \$905,000 submitted by the landlord, Dow Allentown, which was a
21 combination of cash and claim waivers. We'd request approval
22 of both of those bids --

23 THE COURT: All right.

24 MR. FREDERICKS: -- at this time.

25 THE COURT: The Court -- does any party wish to be

1 heard in connection with the debtors' motion?

2 (No audible response)

3 THE COURT: All right. There being no objection, the
4 Court is satisfied that the debtor is exercising its sound
5 business judgment and that there's good justification for the
6 sale of the property, that the bid and the backup bid represent
7 the highest -- good value for the sale of the property and that
8 the sale is in the best interest of the estates and the Court
9 will approve the highest bid, as well as the backup bid.

10 MR. FREDERICKS: Thank Your Honor. I believe that
11 right now, we're currently working with the highest bidder to
12 finalize the purchase agreement and some title insurance
13 issues. I believe this is a bid, if I'm not mistaken, that we
14 want to close next week and, so we're going to submit an order
15 as soon as we iron out those last remaining issues. But, if
16 once that order's submitted, if we could get it entered
17 promptly, that would be very much appreciated.

18 THE COURT: All right.

19 MR. FREDERICKS: I apologize. It has been submitted.

20 THE COURT: So, the order's in BOPS right now?

21 MR. FREDERICKS: I believe so, yes.

22 THE COURT: All right. Well, the Court certainly
23 will look at that then before the end of the day.

24 MR. FREDERICKS: Thank Your Honor. Turning to matter
25 Number 5, this was debtors' motion to sell -- pardon me,

1 property located in Louisville, Kentucky. Again, if it's
2 acceptable to Your Honor, I proffer the testimony of Ms.
3 Bradshaw, again, with respect to this sale?

4 THE COURT: You may.

5 MR. FREDERICKS: If called as a witness, Ms. Bradshaw
6 would testify that this is a 45,000 square foot building
7 located in Louisville, Kentucky. The debtors have no further
8 use for the building, that the debtors marketed the building
9 since the going out of business sales were conducted or started
10 in January of 2009.

11 Ultimately, the debtors received one bid -- or they
12 received a bid from Jaret Nicholls in the amount of \$750,000.
13 Based on that bid, the debtors selected it is as the highest or
14 otherwise best bid to use as a stalking horse. They filed the
15 motion seeking approval of it subject to higher or better bids.
16 No bids were received by the bid deadline. The debtors -- I'm
17 sorry, this also includes the assumption and assignment of a
18 lease to Mr. Nicholls, as well. That lease has little to no
19 value to the estate outside of actually owning the building.

20 The -- given that there were no bids received, the
21 debtors determined to proceed with the sale of the property to
22 Mr. Nicholls for \$750,000 and assumption and assignment of the
23 lease. There have been no objections from the tenant or the
24 lessee to the lease and the debtors have received no other
25 objections to the sale. There is no further use for the

1 building and the debtors believe it's -- that it's -- sound
2 business reasons exist to approve the sale and the assumption
3 and assignment of the lease and that the sale is in the best
4 interest of the debtors, their estates and creditors. That
5 would conclude Ms. Bradshaw's proffer.

6 THE COURT: Does any party wish to cross examine Ms.
7 Bradshaw with regard to the proffered testimony?

8 (No audible response)

9 THE COURT: All right. The proffer is accepted.

10 MR. FREDERICKS: Thank Your Honor. With that, the
11 debtors would request approval of the sale to Mr. Nicholls.

12 THE COURT: All right. The Court finds that the --
13 does any party wish to be heard in connection with this motion?

14 (No audible response)

15 THE COURT: All right. There being no objection, the
16 Court finds that the debtor is exercising its business
17 judgment, that the sale is in the best interest of the
18 bankruptcy estate, that the bid represents the highest and best
19 bid received for the property and the Court will approve the
20 sale.

21 MR. FREDERICKS: Thank Your Honor. I believe that
22 order has also been BOPS'd.

23 THE COURT: All right. And the Court will look at
24 that one, as well.

25 MR. FREDERICKS: Thank you, very much, Your Honor.

1 With that, I think the only remaining two matters are the
2 contested matters that Mr. Galardi will handle. Thank Your
3 Honor.

4 THE COURT: All right.

5 MR. GALARDI: Good morning, Your Honor. Gregg
6 Galardi for the record. I'll turn to Matter 6. Matter 6 is
7 the debtors' motion for entry of an order directing Wachovia
8 Bank as the custodian of the Circuit City Stores supplemental
9 401K plan to deliver the assets of the plan.

10 Your Honor, as set forth in the motion, this was a
11 top hat plan as -- and it was deferred so no taxes were to be
12 paid by the employees on this plan. There were assets turned
13 over to Wachovia Bank in connection with that. It was made
14 clear in the documents which is set forth in the motion that
15 these were subject to the claims of creditors.

16 This is, again, one of those unfortunate
17 circumstances that we have all too often in bankruptcy because
18 there are a number of employees whose deferred compensation was
19 actually put into these plans and they paid no taxes, so
20 they -- Circuit City does not dispute that they had an actual
21 loss here of compensation they might otherwise have gotten.
22 Unfortunately, to get the benefits of the tax law, those -- the
23 funds in that remain subject to the claims of creditors.

24 On the filing date, Your Honor, we did note that we
25 were going to suspend this because I -- we always thought as

1 adding insult to injury if they continued to put in money, it
2 was only money that was going to go to the general unsecured
3 claims. So, I think we suspended it.

4 We've received one objection. That is an objection
5 of Mr. Jonas who I'm familiar with and I know he's in the
6 courtroom today that may want to speak to the Court. Your
7 Honor, I don't think it's really an evidentiary matter in the
8 sense that there are numbers of cases, we cite them in the
9 papers, with respect to the claims of creditors. It is
10 actually a requirement of the federal tax law that they be --
11 remain subject to the claims of creditors and I understand Mr.
12 Jonas is here and wants to address the Court.

13 But, we think as a legal matter and the way and order
14 to get the tax treatment that was beneficial, unfortunately for
15 the employees, those funds do become funds of property of the
16 estate, we've cited that law, and they are subject to be
17 directed back and for the benefit of all unsecured creditors.

18 THE COURT: All right. Thank you, Mr. Galardi. Does
19 any party wish to be heard in connection with the debtors'
20 objection?

21 MR. JONAS: Yeah, Eric Jonas, former SPFH officer of
22 the City Stores.

23 THE COURT: All right.

24 MR. JONAS: Look, I mean, as I said in the letter of
25 objection, you know, when we created the plan, our objective

1 was really to ensure that there was, in fact, protection for
2 all of the funds that were put in. And I'm here really to make
3 a plea at the very least that, you know, if there's a way that
4 the Court can see to it that at least the funds that -- the
5 earned income that was put in by the participants could, in
6 fact, be returned to them. And really there isn't very much
7 else to say other than what was said in the letter.

8 THE COURT: Okay. Your argument was that under
9 Section 702 of the plan that, when there was a change of
10 control, there was an obligation to fund a grantor trust and
11 that that should trump the provisions of Section 701.

12 MR. JONAS: Yeah.

13 THE COURT: If I understood what you said.

14 MR. JONAS: Yeah, especially since we had done that
15 from -- actually from the very beginning of the implementation
16 of the plan and the plan was such that it was just really
17 allowed -- to allow folks who were above the IRS limit to
18 continue to put away for retirement savings.

19 THE COURT: Okay. And I understand that.

20 MR. JONAS: Yeah.

21 THE COURT: And I guess what I want you to understand
22 is that the way that the tax code is that, even if there is a
23 grantor trust and it is still subject to the claims of
24 creditors in order to get the tax treatment that is provided
25 for in these types of plans, so that your claim, although you

1 have a claim against Circuit City, it's not against these
2 specific funds, but just a general unsecured claim. And as Mr.
3 Galardi eluded that that's unfortunate, but that's the way
4 congress set these things up. All right.

5 MR. JONAS: Okay.

6 THE COURT: Thank you.

7 MR. JONAS: Thank you.

8 THE COURT: That said, the objection will be
9 overruled and the debtors' motion will be granted. I trust
10 that Wachovia, as the custodian, has no objection.

11 MR. GALARDI: I -- we understand they have no
12 objection, Your Honor, with an order that would allow for us to
13 direct it then I think they will have no problem. They would
14 prefer an order obviously.

15 THE COURT: Obviously, yes, submit your order. Thank
16 you.

17 MR. GALARDI: Your Honor, the next matter is actually
18 a motion that we've responded to. It's Berkadia's motion to
19 compel the assumption of a ground lease and I turn to podium to
20 counsel.

21 THE COURT: All right.

22 MR. OLSON: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. OLSON: William Olson for Berkadia Commercial
25 Real Estate, LLC. With me in the courtroom is Tim Sharock

1 (phonetic), who is a VP Senior Asset Manager of real estate
2 solutions for Berkadia.

3 Berkadia's here today on a motion seeking to compel
4 the debtor to make a decision to assume or reject a ground
5 lease. The ground lease in question relates to property where
6 Circuit City's former headquarters was located. On that
7 property, there's a 280,000 square foot building which our
8 client, Berkadia, currently owns.

9 The debtors have rejected the lease on the building
10 on February 28th, 2009. Subsequent to that, the former owner
11 of the building when into default on their loan for the
12 building and subsequent to that, Berkadia foreclosed and
13 obtained their ownership interest in the building. And just to
14 clarify, Berkadia is the special servicer of the former lender
15 just to make sure we're clear on that point.

16 It's been -- the (indiscernible) continued for 15
17 months and there has not been a decision with respect to the
18 ground lease. And Berkadia believes that it can show that the
19 debtors have had reasonable time to make a decision with
20 respect to this lease and the Court should issue an order
21 compelling a decision whether to assume or reject this lease.

22 Section 365(d)(2) of the bankruptcy code explicitly
23 grants the debtor in possession in a Chapter 11 bankruptcy
24 discretion to assume or reject an unexpired lease of
25 residential real estate property at any time before a

1 confirmation of the plan. But, also notes that the Court, on
2 request of any party to the lease, may order the debtor in
3 possession to determine within a specified period of time
4 whether to assume or reject the lease.

5 THE COURT: Of course, that relates to residential
6 real property.

7 MR. OLSON: That is correct, Your Honor.

8 THE COURT: And we're not talking about residential
9 real property here.

10 MR. OLSON: That is correct, Your Honor.

11 THE COURT: So, how is that section relevant?

12 MR. OLSON: Berkadia's position is that the same
13 discretion -- the Court has the same discretion with respect to
14 non-residential leases, that this -- although the statute
15 doesn't refer to non-residential leases in that provision, it
16 was not meant to be an exclusion of discretion going forward
17 for the Court in these type of leases.

18 THE COURT: Well, you know, that interests me
19 because, you know, there is a provision in 365 that addresses
20 this specific situation and that's 365(h). And that's where,
21 if the debtor were to reject the ground lease, you would still
22 be protected by being able to continue to pay the rent and
23 obviously remain on the premises.

24 So, how are -- well, two questions. Number one is
25 how are you harmed one way or the other because it seems to me

1 that congress has completely protected your -- the -- your
2 deal, the economics of your deal? And second, why isn't that
3 the exclusive remedy that congress has provided for lessees in
4 your situation?

5 MR. OLSON: The harm that Berkadia's suffering is not
6 lack of access to the property and we recognize 365(h) does --
7 if there is a rejection, does allow continued use of the
8 property. The harm we've -- that Berkadia's suffering is that
9 the lack of a decision is precluding Berkadia to closing a sale
10 of the building that it owns on this property. That although
11 365(h) does spell out a right to use going forward, the
12 protections of that statute aren't sufficient in the
13 marketplace for a lender to be willing to engage in a
14 transaction with a seller with respect to a building on
15 property that is subject to a ground lease. And that's, not
16 only financing the property, but also financing improvements
17 that would be needed to bring in a tenant going forward.

18 So, the harm that Berkadia's suffering is, at this
19 point where there's been no decision, Berkadia's -- is not in a
20 position to sell the property which is what it's looking to do.
21 And as a result of that, Berkadia's not a property owner. It's
22 in this situation because of the larger circumstances involved
23 in this case. Berkadia would not have ended up owning this
24 property if the events that happened to Circuit City hadn't
25 happened, that the course of events led to a default on the

1 loan and Berkadia having to foreclose on its security interest.
2 And Berkadia's trying to -- it is attempting to maximize the
3 value of its collateral at this point and it's being precluded
4 from doing that because of the step -- the unclear status of
5 the leases even though you can -- even with the protections of
6 365(h) and also incurring costs -- further harm would be the
7 costs that it's incurring in maintaining this property
8 currently with no income. There is no current tenant.
9 Although they would be amenable to leasing the property,
10 Berkadia is focused on that -- in their estimate of what the
11 best course for them to maximize their value, they have been
12 focusing on attempting to sell the property as quickly as
13 possible. Although if the tenant came to them, they would be
14 willing to lease the property.

15 To further address your 365(h) point, as well, that
16 provision does provide protection. But, as I read the language
17 of it, that is not limited to non-residential leases. It is
18 generally leases of property. And I guess it -- my view is if
19 you read that provision with 365(d)(2), I'm not sure if you can
20 read 365(h) as making clear that 365(d)(2) doesn't apply to a
21 non-residential lease.

22 THE COURT: Well, wouldn't congress have said just
23 plain lease as opposed to lease of residential real property?
24 I mean, that's pretty specific in 362(d)(2) -- 365(d)(2).

25 MR. OLSON: I believe that that it -- that could be

1 one interpretation that congress did intend for the difference,
2 although I'm not -- there does not seem to be a policy reason
3 behind that change. And my review of the history of the
4 statute is it looks like the change was made around 1998
5 changing that language, that it did at one point say lease.

6 But, it appears to be --

7 THE COURT: And I agree with you. This has been the
8 most amended section of the entire code and it's gone through
9 all sorts of different versions in that it used to say that.
10 You're exactly right.

11 MR. OLSON: And, I guess the other point would be if
12 you look at 365(d)(4) which deals with debtor as lessee, that
13 there is that provision as well providing protection, but it --
14 I think they left open this issue of non-residential leases
15 where the debtor is the lessor. And I think read in full, it
16 should not be -- a plain language reading shouldn't be applied
17 in this context and Collier and bankruptcy also agrees with
18 that interpretation, that that is what Collier would suggest in
19 this circumstance that you would apply the same standard for a
20 non-residential lease as a residential lease.

21 THE COURT: All right. Well, assuming that I weave
22 all of these parts of the statute together and maybe even
23 invoke -- conjure up Section 105 and agree with you that I can
24 do this, tell me why I should do it because don't we -- the
25 debtor, under any circumstances, has to assume or reject all

1 lease, including this one, at the time of confirmation of its
2 plan? And we currently have a plan that's on the table that
3 the creditors have already voted on that is, you know, getting
4 ready for a confirmation hearing which is currently scheduled
5 for next month. So, what -- why should I do this now as
6 opposed to in April?

7 MR. OLSON: Berkadia currently has a purchase sale
8 contract in place with a potential buyer for this property.
9 One of the primary contingencies left on that deal going
10 forward is the issue of the ground lease. And there is a
11 significant possibility that this deal will fall through is
12 there isn't a decision made with respect to the lease.

13 Now --

14 THE COURT: And why can't you come to some sort of an
15 accommodation with the debtor with regard to the business terms
16 of this transaction? I mean, it is something where it doesn't
17 make good sense for the estate, but only makes good sense for
18 you or what's going on here?

19 MR. OLSON: I -- my understanding is I'm not sure why
20 there hasn't been an agreement. I -- and I think that goes
21 into the -- when looking at the elements of who balancing the
22 harm to the parties if you go through the elements --

23 THE COURT: That's what I'm trying to do. I'm trying
24 to figure that out.

25 MR. OLSON: Yes, I am not -- I'm not clear the debtor

1 in there brief, one issue they raise is the base rent, that
2 there's been a -- there was a disagreement on the base rent
3 going forward, that the base rent reset as of March 1, 2010.
4 And that disagreement led to a delay in the debtors' efforts to
5 sell the property the building sits on.

6 My understanding, and we're -- Berkadia's prepared to
7 present testimony on the negotiations about the rent, is that
8 there has been agreement reached on the rent going forward,
9 that it's -- the agreement on the number is \$19,229.17 a month.
10 There had been correspondence between the broker for Berkadia
11 and general counsel of Circuit city on this issue. My reading
12 of the correspondence and our understanding is -- Berkadia's
13 understanding is there is an agreement there's just paperwork
14 to be finalized. And that rent had been paid for March and it
15 will be adjusted to the agreed upon amount going forward. So,
16 that issue's set aside.

17 Beyond that, I don't see another issue. I think the
18 debtor could make a decision and it wouldn't affect their
19 ability to maximize the value of the their property going
20 forward. That if they're asked -- and our motion does request
21 immediate decision. I would request the Court -- I would ask
22 the Court to take into account the quick need on Berkadia's end
23 to sell the property, but would understand that the debtor
24 would need some time to make a decision beyond the time of the
25 Court's order. But, would ask for an order prior to the

1 confirmation of the plan. Especially -- although we -- the
2 Court does have a date set, they're --

3 THE COURT: It's moved before.

4 MR. OLSON: -- it's moved before. And --

5 THE COURT: Okay. And, so what -- how much time do
6 you think that the debtor should have?

7 MR. OLSON: I would say the end of the month would be
8 a reasonable time.

9 THE COURT: Okay.

10 MR. OLSON: And looking at the other factors, I think
11 that one thing to keep in mind is the 15 months, as well, that
12 in the case law on residential leases and contracts, a lot of
13 those cases are -- the motions come three to four months into
14 the bankruptcy. We are at 15 months and I think that also
15 weighs in favor of an order granting -- order compelling a
16 decision in this circumstance, that such a significant amount
17 of time has passed.

18 THE COURT: All right.

19 MR. OLSON: Your Honor, that's the end of my -- I
20 don't have any further issues, argument-wise, but would be
21 prepared to present testimony on the harm issue if necessary.

22 THE COURT: All right. Mr. Olson, I'm going to hear
23 from Mr. Galardi and then I will welcome any further comments
24 in response that you might have.

25 MR. OLSON: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. GALARDI: Your Honor, just very briefly. Your
3 Honor hit on the 365(h) issues. Let's assume that a standard
4 of sort of cause exists. Let's just address those which we can
5 get into evidence, but, Your Honor, what the gentleman just
6 said I think proves that we need more time for the following
7 reasons, (1) we conducted a sale process in January when they
8 sent a letter saying that the ground rent would fall to a low
9 number, so we had to stop that sale process. We're about the
10 commence another sale process, but as he, again, just admitted,
11 we don't have the documented amendment with the ground lease
12 and the sale process take a certain amount of time.

13 Consequently, we've not been able to properly market
14 this property and his client may or may not or whoever it is
15 that wants this may very well be a bidder at that auction and
16 as any auction is successful as you heard today with the
17 parking lot, if we can get two bidders, the estate will get
18 more money. Once we've got the ground rent, we're going to set
19 up a sale process.

20 So, Your Honor, first off we would think that there
21 is no cause and although they may loose money in the long run,
22 that's not a legally cognizable interest that the Court can
23 consider. The Court's supposed to consider the best interests
24 of the creditors and the debtor before it and our interest is
25 to get the highest and best price for it. We couldn't do that

1 in the first instance because their letter. And then we can't
2 of it now until we get the amendment, so that we can properly
3 shop the ground lease to determine who's the highest and best
4 bidder and hopefully we'll get a competitive bidder to his
5 client such that we can have a high auction like we went from
6 65 to nearly a million dollars on the parking lot.

7 So, Your Honor, we would ask, again, not to shorten
8 the time. Yes, we acknowledge the confirmation has moved and
9 may move again. And hopefully it will be sooner rather than
10 later, but we would like to get the time so that we can get the
11 documentation done, that we can actually conduct a sale process
12 and if they come back in without prejudice, if we don't start
13 that sale process within the next 30 to 40 days depending upon
14 the amendment, they can come in again and they say, okay,
15 enough is enough. But, again, most of the parties responsible
16 for not having been able to conclude a sale on this particular
17 property is their client who had sent a letter that there
18 wasn't a ground rent and now is waiting for the documentation.

19 Your Honor, I'd also note that the ground lease
20 actually provides the right of first refusal with respect to
21 this property as well which they've refused to exercise. So,
22 they do have a remedy that they have been asked to go ahead and
23 make a bid. They were not prepared to do it and, Your Honor, I
24 would just note that that is Section 28 of the ground lease.

25 And if Your Honor is a rule of perpetuities person,

1 I'd ask you to look at (b) which says that they still have that
2 right until 21 years after the death of the last survivor of
3 the descendants of the Franklin Delano Roosevelt living on the
4 date of the lease. I just thought that was an interesting
5 provision in the lease, but they do have a right of first
6 refusal, Your Honor.

7 THE COURT: I'm glad you pointed that out.

8 MR. GALARDI: I -- it is fascinating to me. I
9 haven't seen that one before, but I'm assuming that it hasn't
10 terminated for that reason. It's 21 years after.

11 So, we would, again, say, Your Honor, there is really
12 no --

13 THE COURT: Hasn't their rule against perpetuities
14 had been abolished in Virginia?

15 MR. GALARDI: I don't know, Your Honor. But, it
16 would have satisfied it. We did have that discussion this
17 morning. So, because it had a date certain, but --

18 THE COURT: So, if it existed, it would have
19 satisfied.

20 MR. GALARDI: So, I just thought that was an
21 interesting provision I have not seen and I've read a lot of
22 leases.

23 But, again, Your Honor, we don't think that there is
24 any prejudice even if there was a cause standard. Again, the
25 debtors do need additional time. Your Honor, I would deny the

1 motion to compel without prejudice to coming back should we not
2 drag our heels on confirmation go out to start a sale process.
3 But, once the documentation is done which is in their control,
4 we will start a sale process. They will be apprised of it and
5 they are free to bid at that process if there's an alternative.
6 So, we would ask you to deny the motion.

7 THE COURT: Then let me ask this question and I
8 understand the intricacies of 362 -- 365(d)(2) and 365(h) and
9 these provisions, but I assume that under Section 365(d)(3)
10 that under this lease, like in any lease, the -- Circuit City,
11 the debtor, has an obligation to timely perform its obligations
12 under the lease and that you are doing that.

13 MR. GALARDI: Correct, Your Honor. They haven't
14 alleged otherwise. Again --

15 THE COURT: Right. And I understand that.

16 MR. GALARDI: -- Ms. Debra Miller is in there and we
17 have been timely performing and making all of the payments that
18 are due and payable and there's no been an allegation to the
19 otherwise.

20 THE COURT: So, how is the debtor harmed by assuming
21 this lease?

22 MR. GALARDI: Your Honor, because it's a longer term
23 lease and if we were to reject it and put back the claim, if we
24 don't have a value to sell it, obviously we believe that there
25 is a value.

1 THE COURT: I would assume so.

2 MR. GALARDI: And, so otherwise we wouldn't be paying
3 even the amounts that we're paying. So, to assume that now if
4 we -- the only risk is if you don't actually sell it or that if
5 we assume that people charge us less of the proportion, you
6 know. Part of the problem is you have a building under one
7 lease and a ground lease under, so when you proportion the
8 price for the whole thing, we seem to get short-changed on
9 that. That's our biggest concern, so we may not recover that.

10 If we can sell them separately, and again, this is
11 just the auction dynamics, it would be better for us to still
12 have the right to assume and assign and let the other -- so, we
13 can get either the higher price there and have a fair
14 proportion by way of the market standard, who wants the
15 building, who wants the lease, or we'll get one of both come in
16 and compete for both buildings.

17 THE COURT: That makes perfectly good sense. I
18 understand.

19 MR. GALARDI: And that's what we've tried to do with
20 the auction process.

21 THE COURT: All right. Thank you.

22 MR. GALARDI: Thank you.

23 THE COURT: Mr. Olson, you wish to respond? You
24 don't need to address the rule against perpetuities.

25 (Laughter)

1 MR. OLSON: Thank you, Your Honor. I think with
2 respect to the harm issue to the debtor, I believe the issue of
3 the ground lease being the rent being set is something that
4 could be resolved in a limited amount of time. But, that is
5 not something where, within the time frame, I had suggested in
6 my opening argument that would be something that could be
7 resolved within a matter of days. And although counsel for the
8 debtor does make an argument for having some -- needing some
9 flexibility, they would still have the ability to sell the
10 property if they were compelled to make a decision on the lease
11 in the short -- shorter term.

12 That -- and also if they were compelled to make a
13 decision in for -- in, if in our view, the most likely scenario
14 they would assume the lease which would allow the sale to go
15 through, they would have a potential buyer, the buyer of the
16 building, as a key bidder that, while Berkadia may not be as a
17 lender in a position to bid on the ground and I'm not in a
18 position to represent going forward exactly what Berkadia would
19 do if it retains its ownership going forward, but it seems that
20 an owner of the building that's looking to own it long-term
21 would be more likely in a position to be interested in bidding
22 on the ground where the building is located. And that making
23 an order compelling a decision would more likely lead to that
24 result, that they would be an owner that would be looking to
25 own the building going forward long-term.

1 THE COURT: Well, what if they rejected your lease?

2 MR. OLSON: That would be a difficult -- on the --

3 THE COURT: Well, you'd get something you wouldn't
4 want.

5 MR. OLSON: That would --

6 THE COURT: You're hoping that I say they have to do
7 one or the other and they're going to do what you perceive to
8 be the rational thing to do.

9 MR. OLSON: That's right. And if it -- if they
10 reject the lease, then --

11 THE COURT: Then you're in the same soup you're in
12 right now.

13 MR. OLSON: We are, in some ways, the same soup,
14 although we see we can't finance the -- we would have problem
15 financing with a buyer and it would lead to a need to
16 coordinate -- at least my view would be a need to coordinate
17 with Circuit City going forward and I think Your Honor put your
18 finger on it, that the rational thing -- the rational view is
19 they would likely assume the lease because it, I think for all
20 parties involved, would be the best outcome.

21 But, as we recognize, it's -- what we're asking the
22 Court is to compel a decision and Circuit City would retain the
23 discretion to make decision what they want to do with the lease
24 and we can't push either way on that. But, I think it is
25 reasonable for the Court to consider what the rational outcome

1 would be and, playing that forward, the debtor would still have
2 ample opportunity to maximize its value and, in some ways,
3 there would be a benefit going forward because there's a more
4 likely opportunity for there to be a buyer of the building that
5 would be bidding on the lease or would be exercising -- more
6 likely to exercise the right of first refusal.

7 THE COURT: All right. Thank you.

8 MR. OLSON: Thank you.

9 THE COURT: All right. The Court has before it the
10 motion of Berkadia to compel the assumption of rejection of the
11 ground lease. The Court is not going to rule at this time
12 whether or not it has the discretion to compel the debtor to
13 assume or reject a lease pursuant to 365(d)(2). The debtor --
14 the Court is going to deny the motion without prejudice for the
15 time being and reserve making that decision if it has to at a
16 future date.

17 It seems to the Court that the economies here -- or
18 the economics of the deal really require the parties to talk to
19 each other and to work something out. You're obviously joined
20 at the hip with this one and some sort of a joint resolution
21 obviously makes sense.

22 That said, I'm going to carry this over to the April
23 6 date which is when we currently have the confirmation hearing
24 scheduled. If the parties have not made progress at that point
25 if there's no sale process in process at that time then, Mr.

1 Olson, you may renew your motion at that time and the Court
2 will, you know, consider it in light of where we are at that
3 point in time, so it doesn't drag out internally. That's
4 certainly not something that the Court wants to see either, but
5 I do think that there's a resolution that the parties can
6 probably come to here with regard to this matter.

7 Any questions regarding the Court's ruling?

8 UNIDENTIFIED ATTORNEY: No, Your Honor.

9 THE COURT: All right. Is there are any other
10 business we need to take up today?

11 MR. FREDERICKS: Yes, Your Honor. Just briefly, we
12 just wanted to advise the Court at the last hearing Your Honor
13 did rule on the received issue. Last night, we did send
14 proposed findings of fact and conclusions of law to the Court.
15 I wanted to let you know that we did circulate those to
16 Panasonic. We did receive comments from Panasonic. We
17 accepted some of those and not others and obviously Your
18 Honor's free to enter whatever ruling Your Honor ultimately
19 reaches.

20 THE COURT: Well, I appreciate that.

21 MR. FREDERICKS: Obviously, but --

22 THE COURT: All right.

23 MR. FREDERICKS: Thank Your Honor.

24 THE COURT: And I appreciate you having circulated
25 those to opposing counsel and the Court will look at those

1 probably over the weekend. Yes, sir?

2 MR. FREDERICKS: On the fifth omnibus objection with
3 respect to U.S. Signs, there was one point of clarification.

4 We had --

5 THE COURT: Which number is this, just so I know
6 where I am?

7 UNIDENTIFIED ATTORNEY: Twenty-six.

8 THE COURT: Twenty-six, thank you.

9 MR. FREDERICKS: And they are --

10 THE COURT: Yes, I see them.

11 MR. FREDERICKS: -- on Exhibit A, as well. The
12 matter was set for April 29th hearing. Mr. Hutson has advised
13 me that his clients aren't available that date. What we're
14 going to do is we intend to serve some discovery. Then we want
15 to take some discovery on this matter and we're going to use
16 that hearing as a status conference or discovery conference if
17 we need it. And then we'll pick a mutually agreeable date to
18 have an evidentiary hearing if we need it.

19 THE COURT: All right. So, that won't go over it,
20 but we'll not go on on that date, but we'll set a date at that
21 point in time.

22 MR. FREDERICKS: Correct.

23 THE COURT: All right. That's acceptable to the
24 Court. Mr. Hutson?

25 MR. HUTSON: That's correct, Your Honor. Just for

1 the record, Richard Hutson, Fullerton and Knowles for U.S.
2 Signs. The debtor said it accurately, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. FREDERICKS: And my apologies for the --

5 THE COURT: All right.

6 MR. FREDERICKS: -- miscommunication.

7 THE COURT: All right. Thank you.

8 MR. FREDERICKS: Thank Your Honor. I don't believe
9 there's --

10 THE COURT: Any other business then that we need to
11 take up today?

12 MR. FREDERICKS: I don't believe so, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. FREDERICKS: Thank Your Honor.

15 COURT CLERK: All rise. Court stands in recess.

16 * * * * *

17 C E R T I F I C A T I O N

18 I, AMY L. RENTNER, court approved transcriber,
19 certify that the foregoing is a correct transcript from the
20 official electronic sound recording of the proceedings in the
21 above-entitled matter, and to the best of my ability.

22

23 /s/ Amy Rentner

24 AMY L. RENTNER

25 J&J COURT TRANSCRIBERS, INC. DATE: April 1, 2010

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